

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

DEFINITIONS AND ELIGIBILITY STANDARDS

The following definitions and standards shall be used by the Wisconsin Department of Transportation (WisDOT) in determining whether a firm is owned and controlled by one or more minorities or women and is, therefore, eligible to be certified as a DBE pursuant to 49 CFR, Part 26.

DEFINITIONS

Disadvantaged Business Enterprise means a small business concern which: (a) is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. WisDOT shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. WisDOT also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

- (a) **Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;
- (b) **Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin, regardless of race;
- (c) **Native Americans**, which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- (d) **Asian-Pacific Americans**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, and Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- (e) **Asian-Indian Americans**, which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- (f) **Women**.

ELIGIBILITY STANDARDS

1. A person's minority status shall be based on an individual's claim that he/she is a member of a minority group and is so regarded by that particular minority community. WisDOT may not accept this claim if it determines that the claim is invalid.
2. An eligible DBE shall be an independent business. The ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority or women owners shall share the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a DBE. In determining whether a potential DBE is an independent business, WisDOT shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the contract work, and the degree to which financial, equipment leasing and other relationships with non-minority firms vary from industry practice.
3. The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions which shall limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise, that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm.

4. If the owners of the firm who are not minorities or women are disproportionately responsible for the operations of the firm, then the firm is not controlled by minorities or women and shall not be considered a DBE within the meaning of this program. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this program, be considered as controlling the business.
5. All securities which constitute ownership and/or control of a corporation for the purposes of establishing it as a DBE shall be held directly by minorities or women. No securities held in trust, or by a guardian for a minor, shall be considered as held by a minority or woman in determining the ownership or control of a corporation.
6. The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial.

SPECIAL CONSIDERATION

However, in addition to the above six standards, WisDOT shall give special consideration to the following circumstances in determining eligibility of DBEs:

1. Newly formed firms and firms whose ownership and/or control has changed since the date of the bid advertisement of the project will be closely scrutinized to determine the reasons for the timing of the formation or change in the firm.
2. A previous and/or continuing employer-employee relationship between or among present owners will be carefully reviewed by WisDOT to ensure that the employee-owner has management responsibilities and capabilities.
3. Any relationship between a DBE and a business which is not a DBE which has an interest in the DBE, will be carefully reviewed to determine if the interest of the non-DBE conflicts with the ownership and control requirements.
4. Stock transfers that occur within one year prior to an application for certification.

JOINT VENTURE ELIGIBILITY

A joint venture is eligible under this program if the DBE partner of the joint venture meets the standards for an eligible DBE set forth above and the DBE partner is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management, responsibilities, risks and profits of the joint venture.

COOPERATION

A business wishing to be certified as a DBE or joint venture DBE by WisDOT shall cooperate in supplying additional information which may be requested in order to make a determination for certification. Failure to supply requested information may result in denial of certification.

DISCLOSURE

WisDOT shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with federal and state law.

UPDATE FOR CERTIFICATION

Once certified, the DBE certification is good for 3 years. A DBE shall update its submission annually by submitting an affidavit stating that there are no changes in the information originally submitted to WisDOT. Any time there is a change in ownership or control of the firm, the DBE shall notify the Department, in writing, within 30 days of this change.

It is the DBE's responsibility to make sure their certification remains current. Prior to expiration of certification the DBE should contact WisDOT for recertification materials. WisDOT may remind each certified DBE of the annual update. Any firm not sending in the required information will be removed from the certified list.

OUT OF STATE FIRMS

Firms located in other states must first be certified by their home state DOT to become certified by WisDOT.

APPEALS

Any firm which believes that it has been wrongly denied certification may appeal to the U.S. Department of Transportation for a decision on the matter.